



**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R07-OAR-2019-0337; FRL-9996-10-Region 7]**

**Air Plan Approval; Missouri; Revisions to Cross-State Air Pollution Rule Annual Trading Program and Rescission of Clean Air Interstate Rule**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing approval of revisions to the State Implementation Plan (SIP) submitted on January 15, 2019, and two revisions on March 7, 2019, by the State of Missouri. The January 15, 2019, revision requests EPA remove from the Missouri Code of State Regulations (CSR), the regulations that established trading programs under the Clean Air Interstate Rule (CAIR). The EPA is proposing to act only on the revisions to the annual nitrogen oxides (NO<sub>x</sub>) and sulfur dioxide (SO<sub>2</sub>) trading program. The EPA will act on the revisions to the seasonal NO<sub>x</sub> trading program in a separate action. The March 7, 2019, submissions revise Missouri's regulations related to the Cross-State Air Pollution (CSAPR) Annual Trading Program for SO<sub>2</sub> and NO<sub>x</sub>, and for ozone season NO<sub>x</sub>. Approval of these revisions will not impact air quality and

ensures Federal enforceability of the State's rules. The EPA is proposing to approve these SIP revisions in accordance with the requirements of the Clean Air Act (CAA).

**DATES:** Comments must be received on or before **[insert date 30 days after date of publication in the Federal Register]**.

**ADDRESSES:** You may send comments, identified by Docket ID No. EPA-R07-OAR-2019-0337 to <https://www.regulations.gov>. Follow the online instructions for submitting comments.

*Instructions:* All submissions received must include the Docket ID No. for this rulemaking. Comments received will be posted without change to <https://www.regulations.gov>, including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the "Written Comments" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** Lachala Kemp, Environmental Protection Agency, Region 7 Office, Air Quality Planning Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219; telephone number (913) 551-7214; email address [kemp.lachala@epa.gov](mailto:kemp.lachala@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document "we," "us," and "our" refer to the EPA.

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### **I. Written Comments**

Submit your comments, identified by Docket ID No. EPA-R07-OAR-2019-0337 at <https://www.regulations.gov>. Once submitted, comments cannot be edited or removed from Regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

## **II. What is Being Addressed in this Document?**

The EPA is proposing to approve revisions to the Missouri State Implementation Plan (SIP) that were submitted to EPA on January 15, 2019, and March 7, 2019.

The January 15, 2019, submission revises Missouri's regulations, title 10 Code of State Regulations (10 CSR) 10-6.362 and 10-6.366<sup>1</sup> by rescinding and removing these rules. The EPA-administered trading programs under CAIR were discontinued on December 31, 2014, upon the implementation of the Cross-State Air Pollution Rule (CSAPR), which was promulgated by the EPA to replace CAIR. CSAPR established Federal trading programs for sources in multiple states, including Missouri, that replace the CAIR state and Federal trading programs.

Missouri submitted two revisions on March 7, 2019. The submissions revise Missouri's SIP to remove unnecessary use of restrictive language, update incorporations by reference, add definitions specific to the rule, and fully adopt the CSAPR Annual Trading Program for both SO<sub>2</sub> and NO<sub>x</sub> into the Missouri SIP. The revisions amend Missouri's regulations, 10 CSR 10-6.372, "Cross-State Air Pollution Rule Annual NO<sub>x</sub> Trading Allowance Allocations", 10 CSR 10-6.374, "Cross-State Air Pollution Rule Ozone Season NO<sub>x</sub> Trading Allowance Allocations",

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<sup>1</sup> The January 15, 2019, submission also contained a revision to 10 CSR 10-6.364. EPA is not proposing to act on that portion of the submission in this action. EPA will address this portion of the submission in a separate action.

and 10 CSR 10-6.376, "Cross-State Air Pollution Rule Annual SO<sub>2</sub> Trading Allowance Allocations," which give Missouri authority for the CSAPR Annual Trading Programs for NO<sub>x</sub> and SO<sub>2</sub>, and ozone season NO<sub>x</sub> Trading Program, and provides a process to allocate allowances to affected units in Missouri for compliance with the NO<sub>x</sub> and SO<sub>2</sub> CSAPR Annual and ozone season NO<sub>x</sub> Trading Programs.

### **III. Background**

In 2005, the EPA promulgated CAIR (70 FR 25162, May 12, 2005) to address transported emissions that significantly contributed to downwind states' nonattainment and interfered with maintenance of the 1997 ozone and fine particulate matter (PM<sub>2.5</sub>) National Ambient Air Quality Standards (NAAQS). CAIR required 28 states, including Missouri, to revise their SIPs to reduce emissions of NO<sub>x</sub> and SO<sub>2</sub>, precursors to the formation of ambient ozone and PM<sub>2.5</sub>. Under CAIR, the EPA provided model state rules for separate cap-and-trade programs for annual NO<sub>x</sub>, ozone season NO<sub>x</sub>, and annual SO<sub>2</sub>. The annual NO<sub>x</sub> and annual SO<sub>2</sub> trading programs were designed to address transported PM<sub>2.5</sub> pollution, while the ozone season NO<sub>x</sub> trading program was designed to address transported ozone pollution. The EPA also promulgated CAIR Federal Implementation Plans (FIPs) with CAIR Federal trading programs that would address each state's CAIR requirements in the event that a CAIR SIP for the state was not submitted or approved (71 FR 25328, April 28, 2006). Generally,

both the model state rules and the Federal trading program rules applied only to electric generating units (EGUs), but in the case of the model state rule and Federal trading program for ozone season NO<sub>x</sub> emissions, each state had the option to submit a CAIR SIP revision that expanded applicability to include certain non-EGUs<sup>2</sup> that formerly participated in the NO<sub>x</sub> Budget Trading Program under the NO<sub>x</sub> SIP Call.<sup>3</sup> Missouri submitted, and the EPA approved, a CAIR SIP revision based on the model state rules establishing CAIR state trading programs for annual SO<sub>2</sub>, annual NO<sub>x</sub>, and ozone season NO<sub>x</sub> emissions, with certain non-EGUs included in the state's CAIR ozone season NO<sub>x</sub> trading program. See 72 FR 71073 (December 14, 2007).

The United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) initially vacated CAIR in 2008, but ultimately remanded the rule to EPA without vacatur to preserve the environmental benefits provided by CAIR. *North Carolina v. EPA*, 531 F.3d 896, *modified*, 550 F.3d 1176 (2008). The ruling allowed CAIR to remain in effect temporarily until a replacement rule consistent with the court's opinion was developed. While the EPA worked on developing a replacement rule, the CAIR program continued as planned with the NO<sub>x</sub> annual

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<sup>2</sup> These non-EGUs are generally defined in the NO<sub>x</sub> SIP Call as stationary, fossil fuel-fired boilers, combustion turbines, or combined cycle systems with a maximum design heat input greater than 250 million British thermal units per hour (MMBtu/hr).

<sup>3</sup> In October 1998, EPA finalized the "Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of "Ozone"—commonly called the NO<sub>x</sub> SIP Call. See 63 FR 57356 (October 27, 1998).

and ozone season programs beginning in 2009 and the SO<sub>2</sub> annual program beginning in 2010.

On August 8, 2011 (76 FR 48208), acting on the D.C. Circuit's remand, the EPA promulgated CSAPR to replace CAIR in order to address the interstate transport of emissions contributing to nonattainment and interfering with maintenance of the two air quality standards covered by CAIR as well as the 2006 PM<sub>2.5</sub> NAAQS. CSAPR required EGUs in affected states, including Missouri, to participate in Federal trading programs to reduce annual SO<sub>2</sub>, annual NO<sub>x</sub>, and/or ozone season NO<sub>x</sub> emissions. The rule also contained provisions that would sunset CAIR-related obligations on a schedule coordinated with the implementation of the CSAPR compliance requirements. CSAPR was intended to become effective January 1, 2012; however, the timing of CSAPR's implementation was impacted by a number of court actions.

Numerous parties filed petitions for review of CSAPR in the D.C. Circuit, and on December 30, 2011, the D.C. Circuit stayed CSAPR prior to its implementation and ordered the EPA to continue administering CAIR on an interim basis. On August 21, 2012, the D.C. Circuit issued its ruling, vacating and remanding

CSAPR to the EPA and ordering continued implementation of CAIR. *EME Homer City Generation, L.P. v. EPA*, 696 F.3d 7, 38 (D.C. Cir. 2012). The D.C. Circuit's *vacatur* of CSAPR was reversed by the United States Supreme Court on April 29, 2014, and the case was remanded to the D.C. Circuit to resolve remaining issues in accordance with the Supreme Court's ruling. *EPA v. EME Homer City Generation, L.P.*, 134 S. Ct. 1584 (2014). On remand, the D.C. Circuit affirmed CSAPR in most respects but remanded certain state emissions budgets. *EME Homer City Generation, L.P. v. EPA (EME Homer City II)*, 795 F.3d 118, 138 (D.C. Cir. 2015).

Throughout the initial round of D.C. Circuit proceedings and the ensuing Supreme Court proceedings, the stay on CSAPR remained in place, and the EPA continued to implement CAIR. Following the April 2014 Supreme Court decision, the EPA filed a motion asking the D.C. Circuit to lift the stay in order to allow CSAPR to replace CAIR in an equitable and orderly manner while further D.C. Circuit proceedings were held to resolve remaining claims from petitioners. Additionally, the EPA's motion requested delay, by three years, of all CSAPR compliance deadlines that had not passed as of the approval date of the stay. On October 23, 2014, the D.C. Circuit granted EPA's request, and on December 3, 2014 (79 FR 71663), in an interim final rule, the EPA set the updated effective date of CSAPR as January 1, 2015 and delayed the implementation of CSAPR Phase I



to 2015 and CSAPR Phase 2 to 2017. In accordance with the interim final rule, the EPA stopped administering the CAIR state and Federal trading programs with respect to emissions occurring after December 31, 2014, and the EPA began implementing CSAPR on January 1, 2015.<sup>4</sup>

In October 2016, the EPA promulgated the CSAPR Update (81 FR 74504, October 26, 2016) to address interstate transport of ozone pollution with respect to the 2008 ozone NAAQS and issued FIPs that established or updated ozone season NO<sub>x</sub> budgets for 22 states, including Missouri. Starting in January 2017, the CSAPR update budgets were implemented via modifications to the CSAPR NO<sub>x</sub> ozone season allowance trading program that was established under the original CSAPR.

As noted above, starting in January 2015, the CSAPR Federal trading programs for annual NO<sub>x</sub>, ozone season NO<sub>x</sub>, and annual SO<sub>2</sub> were applicable in Missouri. Thus, since January 1, 2015, the EPA has not administered the CAIR state trading programs for annual NO<sub>x</sub>, ozone season NO<sub>x</sub>, or annual SO<sub>2</sub> emissions established by the Missouri regulations.

On January 15, 2019, the State of Missouri, through the Missouri Department of Natural Resources (MoDNR), formally submitted a SIP revision that requests removal from its SIP of

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<sup>4</sup> EPA solicited comment on the interim final rule and subsequently issued a final rule affirming the amended compliance schedule after consideration of comments received. 81 FR 13275 (March 14, 2016).

Missouri Code of State Regulations including 10 CSR 10-6.362 Clean Air Interstate Rule NO<sub>x</sub> Annual Trading Program; 10 CSR 10-6.364 Clean Air Interstate Rule NO<sub>x</sub> Ozone Season Trading Program; and 10 CSR 10-6.366 Clean Air Interstate Rule SO<sub>2</sub> Annual Trading Program (which implemented the CAIR annual NO<sub>x</sub>, ozone season NO<sub>x</sub>, and annual SO<sub>2</sub> trading programs in Missouri.<sup>5</sup>

#### **IV. What Part 52 Revision is the EPA Proposing to Approve?**

MoDNR's January 15, 2019, SIP revision requests the removal of regulations from the Missouri SIP under 10 CSR 10-6.362 Clean Air Interstate Rule Annual NO<sub>x</sub> Trading Program, 10 CSR 10-6.364 Clean Air Interstate Rule Seasonal NO<sub>x</sub> Trading Program, and 10 CSR 10-6.366 Clean Air Interstate Rule SO<sub>2</sub> Trading Program, which implemented the state's CAIR annual NO<sub>x</sub>, seasonal NO<sub>x</sub>, and SO<sub>2</sub> trading programs. The EPA has not administered the trading programs established by these regulations since January 1, 2015, when the CSAPR trading programs replaced the CAIR programs, and the state CAIR regulations have been repealed in their entirety from the Missouri Code of State Regulations. The amendments removing these regulations were adopted by the State Air Conservation Commission on September 27, 2018.

As noted previously, the CAIR annual NO<sub>x</sub>, seasonal NO<sub>x</sub>, and SO<sub>2</sub> trading programs addressed interstate transport of emissions

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<sup>5</sup> The EPA is not proposing to act on the requested revisions to 10 CSR 10-6.364 and will act on that submission in a separate action.

under the 1997 PM<sub>2.5</sub> NAAQS and the 1997 ozone NAAQS. The D.C. Circuit remanded CAIR to the EPA for replacement, and in response the EPA promulgated CSAPR which, among other things, fully addresses Missouri's interstate transport obligation under the 1997 PM<sub>2.5</sub> NAAQS. (76 FR 48208 at 76 FR 48210, August 8, 2011). The EPA stopped administering the CAIR trading programs after 2014 and instead began implementing the CSAPR trading programs in 2015.

Therefore 10-6.362 and 10-6.366 do not play a role in addressing the transport obligations that the state initially adopted the rules to address: The CAIR trading programs are no longer being administered; the state's transport obligation under the 1997 PM<sub>2.5</sub> NAAQS is now being addressed by the CSAPR trading programs for annual NO<sub>x</sub> and SO<sub>2</sub>.

Missouri's CAIR trading programs for annual NO<sub>x</sub> and SO<sub>2</sub> were adopted only to address Missouri's transport obligation under the 1997 PM<sub>2.5</sub> NAAQS, one of the two NAAQS underlying the EPA's CAIR rules.

In summary, Missouri's CAIR rules at 10 CSR 10-6.362 Clean Air Interstate Rule Annual NO<sub>x</sub> Trading Program, and 10 CSR 10-6.366 Clean Air Interstate Rule SO<sub>2</sub> Trading Program no longer play any role in addressing the transport obligations that the rules were adopted to address. The EPA therefore finds Missouri's January 15, 2019, SIP revision requesting removal of

these CAIR rules from the SIP approvable in accordance with section 110 of the CAA. The public comments received on the NPR are discussed in section III of this proposed rulemaking notice.

The EPA is also proposing to approve Missouri's revisions to 10 CSR 10-6.372, 10 CSR 10-6.374, and 10 CSR 10-6.376. The proposed revisions to 10-6.372 give Missouri responsibility for the CSAPR NO<sub>x</sub> Annual Trading Program by incorporating by reference 40 CFR 97.404 through 40 CFR 97.428 into the Missouri SIP. The monitoring and recordkeeping provisions of the CSAPR NO<sub>x</sub> Annual Trading Program, 40 CFR 97.430 through 40 CFR 97.435 are incorporated by reference into 10-6.372.

Missouri has also removed the unnecessary use of restrictive language including the removal of the word "required" in sections 10-6.372 (3) (A) 2.B.; 10-6.372(3) (B) D. (I); and 10-6.372(3) (B) E. Missouri has also changed the word "shall" to "will" in 10-6.372(4) (B).

The proposed revisions to 10-6.374 give Missouri responsibility for the CSAPR ozone season NO<sub>x</sub> Trading Program by incorporating by reference 40 CFR 97.804 through 40 CFR 97.828 into the Missouri SIP. The monitoring and recordkeeping provisions of the CSAPR ozone season NO<sub>x</sub> Trading Program, 40 CFR 97.830 through 40 CFR 97.835 are incorporated by reference into 10-6.374.

The proposed revisions to 10-6.376 give Missouri responsibility for the CSAPR SO<sub>2</sub> Annual Trading Program by incorporating by reference 40 CFR 97.604 through 40 CFR 97.628 into the Missouri SIP. The monitoring and recordkeeping provisions of the CSAPR NO<sub>x</sub> Annual Trading Program, 40 CFR 97.630 through 40 CFR 97.635 are incorporated by reference into 10-6.376.

Missouri has also removed the unnecessary use of restrictive language including the removal of the word "required" in sections 10-6.376 (3) (A) 2.B.; 10-6.376(3) (B) D. (I); and 10-6.372(3) (B) E. Missouri has also changed the word "shall" to "will" in 10-6.376(4) (B). The revisions can be found in the docket to this action.

The EPA is proposing to approve these revisions to the Missouri SIP. These revisions incorporate by reference EPA's CSAPR Annual NO<sub>x</sub> and SO<sub>2</sub>, and ozone season NO<sub>x</sub> trading programs and give Missouri the responsibility to administer these programs. The EPA encourages states to include such provisions in their state SIPs. The EPA does not believe that the language changes to the SIP reduce the stringency of the SIP. The EPA does not believe these language changes will affect air quality. Therefore, the EPA is proposing to approve Missouri's revisions to 10-6.372, 10-6.374, and 10-6.376.

## **V. Have the Requirements for Approval of a SIP Revision Been Met?**

The state submission has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submission also satisfied the completeness criteria of 40 CFR part 51, appendix V.

The state provided public notice on the January 15, 2019, SIP revision from June 25, 2018 through August 2, 2018 and received no comments.

The state provided public notice on the March 7, 2019, SIP revisions from August 24, 2018 to October 4, 2018 and received seven comments from the EPA during the Regulatory Impact Review. The EPA's comments are in the docket for this proposed action. Missouri amended the rule in response to the comments and the EPA did not comment further. In addition, as explained above, the revision meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

## **VI. What Action is the EPA Taking?**

The EPA is proposing to approve the revisions to 10 CSR 10-6.362 and 10 CSR 10-6.366 that remove the CAIR annual trading program rules from the SIP. The EPA is also proposing to approve the revisions to 10-6.372, 10-6.374, and 10-6.376 that incorporate by reference the provisions of the Federal CSAPR

program for annual NO<sub>x</sub> and SO<sub>2</sub>, and ozone season NO<sub>x</sub> and make other wording changes.

We are processing this as a proposed action because we are soliciting comments on this proposed action. Final rulemaking will occur after consideration of any comments.

## **VII. Incorporation by Reference**

In this document, the EPA is proposing to include regulatory text in an EPA final rule that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the Missouri Regulations described in the proposed amendments to 40 CFR part 52 set forth below. The EPA has made, and will continue to make, these materials generally available through [www.regulations.gov](http://www.regulations.gov) and at the EPA Region 7 Office (please contact the person identified in the "For Further Information Contact" section of this preamble for more information).

Also, in this document, as described in the proposed amendments to 40 CFR part 52 set forth below, EPA is proposing to remove provisions of the EPA-Approved Missouri Regulations and Statutes from the Missouri State Implementation Plan, which is incorporated by reference in accordance with the requirements of 1 CFR part 51.

## VIII. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866.
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);



- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of the National Technology Transfer and Advancement Act (NTTA) because this rulemaking does not involve technical standards; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments

or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: July 23, 2019.

James Gulliford,  
Regional Administrator,  
Region 7.

For the reasons stated in the preamble, the EPA proposes to amend 40 CFR part 52 as set forth below:

**PART 52--APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

**Subpart-AA Missouri**

2. In §52.1320, the table in paragraph (c) is amended by:

- a. Removing entries "10-6.362" and "10-6.366";
- b. Revising entries "10-6.372" and "10-6.376"; and
- c. Adding entry "10-6.374".

The revisions and addition read as follows:

**§52.1320 Identification of plan.**

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(c) \* \* \*

**EPA-Approved Missouri Regulations**

Missouri citation	Title	State effective date	EPA approval date	Explanation
Missouri Department of Natural Resources				
* * * * *				
Chapter 6-Air Quality Standards, Definitions, Sampling and Reference Methods, and Air Pollution Control Regulations for the State of Missouri				
* * * * *				
10-6.372	Cross-State Air Pollution Rule annual NO <sub>x</sub> Trading Allowance Allocations	3/30/2019	[Date of publication of the final rule in the Federal Register], [Federal Register citation of the final rule]	
10-6.374	Cross-State Air Pollution Rule	3/30/2019	[Date of publication of the final rule in	

Missouri citation	Title	State effective date	EPA approval date	Explanation
	ozone season NO <sub>x</sub> Trading Allowance Allocations		the Federal Register], [Federal Register citation of the final rule]	
10-6.376	Cross-State Air Pollution Rule annual SO <sub>2</sub> Trading Allowance Allocations	3/30/2019	[Date of publication of the final rule in the Federal Register], [Federal Register citation of the final rule]	
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[FR Doc. 2019-16045 Filed: 7/29/2019 8:45 am; Publication Date: 7/30/2019]